Supreme Court, U.S.
FILED

07-238 AUG 17 2007

OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

SKIT INTERNATIONAL, LTD.,

Petitioner,

v.

DAC TECHNOLOGIES OF ARKANSAS, INC.
F/K/A DAC TECHNOLOGIES OF AMERICA, INC.
And DAC TECHNOLOGIES GROUP INTERNATIONAL,
INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

R. David Lewis
1109 Kavanaugh Boulevard
Little Rock, Arkansas 72205
(501) 664-0818
Attorney for Petitioner

QUESTIONS PRESENTED

Whether the *Rooker-Feldman* doctrine bars the federal district court from vacating a judgment against petitioner for over 1.5 million dollars in the face of the fact that petitioner was never served with a summons or complaint and therefore was not a party and therefore not a "state court loser" as required by *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.* and in the face of the fact that the denial of the motion to set aside the judgment on the grounds of lack of service was wrongfully denied appellate review by the Arkansas Supreme Court, which prevented petitioner from having a reasonable opportunity to raise its claims in the state court as required by the Second Circuit, Third Circuit and the Seventh Circuit, and sometimes but not always by the Eighth Circuit and the Ninth Circuit.

LIST OF PARTIES

The parties below are listed on the cover of this petition.

CORPORATE DISCLOSURE STATEMENT

Skit International, Ltd. is a corporation owned by citizens of Hong Kong. DAC Technologies of Arkansas, Inc. and DAC Technologies of America, Inc. are defunct corporations. DAC Technologies Group International Limited is a publicly held corporation based in Florida.

TABLE OF CONTENTS

page

QUESTIONS PRESENTED ..... *i*

LIST OF PARTIES..... *ii*

CORPORATE DISCLOSURE STATEMENT..... *ii*

TABLE OF CONTENTS..... *iii*

TABLE OF CITED AUTHORITIES..... *vi*

TABLE OF APPENDICES..... *x*

OPINION BELOW..... 1

STATMENT OF JURISDICTION..... 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED..... 1

STATEMENT OF THE CASE..... 2, 3

REASONS FOR ALLOWANCE OF THE WRIT..... 4-14

1. Since petitioner was never served with the summons or complaint prior to the entry of a judgment in excess of 1.5 million against it, petitioner was not a party to the suit at that time and therefore was not a "state-court loser" within the meaning of *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.* 544 U.S. 280, 284, 125 S Ct. 1517, 1521-22, 161 L. Ed. 2d 454 (2005) and the decision below is therefore inconsistent

with this Court's opinion in that case.

2. The Eighth Circuit opinion in this case is also inconsistent with the Rooker-Feldman doctrine as defined by the *Exxon Mobil* opinion because the petitioner in its federal district court complaint was not "inviting district court review and rejection" of the state trial court's denial of petitioner's motion to set aside the judgment or the aborted appeal from that denial.

3. *Rooker-Feldman* does not apply to bar subject matter jurisdiction of federal district court because of the denial of the motion to set aside judgment by the state trial court as the Arkansas Supreme Court wrongfully denied appellate review of that decision.

4. The Eighth Circuit's opinion wrongfully implied that the Arkansas Supreme Court decided the appeal was untimely although there was no such finding and said the state circuit court found that Skit had been served but there was no such finding.

5. The *Rooker-Feldman* doctrine does not apply to this case for the additional reason that the complaint in federal district court did not invite district court review and rejection of

the original judgment as required by Exxon Mobil as lack of service was not raised prior to judgment.

6. The *Rooker-Feldman* doctrine should be overruled as it is causing more mischief than benefit and its role could be adequately performed by *res judicata.*

TABLE OF CITED AUTHORITIES

Cases: *Page*

Bianchi v. Rylaarsdam,
334 F.3d 895 (9th Cir. 2003).....10

Brokaw v. Weaver,
305 F.3d 660 (7th Cir. 2002).....9

Brown & Root, Inc. v. Breckenridge,
211 F.3d 194, 211 F.3d 194 (4th Cir. 2000).....10

Dale v. Moore,
121 F.3d 624 (11th Cir. 1997).....9

District of Columbia Court of Appeals v. Feldman,
460 U.S. 462 (1983).....11

Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,

544 U.S. 280, 284, 125 S Ct. 1517,
1521-22, 161 L. Ed. 2d 454 (2005).....4, 5, 6, 12

Gulla v. North Strabane Tp.,
146 F.3d 168 (3d Cir. 1998).....9

Johnson v. De Grandy,
512 U.S. 997, 1005 (1994).....5

Johnson v. Riddle,
305 F.3d 1107, 1116 (10th Cir. 2002).....5

Johnson v. Rodrigues
226 F.3d 1103, 1109 (10th Cir. 2000).....5

Kenmen Eng'g v. City of Union,
314 F.3d 468, 473 (10th Cir. 2002).....6

Lance v. Dennis,
126 S.Ct. at 1202-03 (2006).....5, 6, 12, 13

Long v. Shorebank Development Corp.,
182 F.3d 548 (7th Cir. 1999).....9

Marshall v. Marshall,
547 U.S. 293, 126 S. Ct. 1735, 164 L.Ed.2d 480 (2006)...13

Moccio v. New York State Office of Court Administration,
95 F.3D 195 (2d Cir. 1996).....9

Mo's Express LLC v. Sopkins,
441 F.3rd 1229 (10th Cir. 2006).....5

Mullins v. State,
57 F.3d 789 (9th Cir. 2005)..... 11

Rooker v. Fidelity Trust Company,
263 U.S. 413 (1923).....11

Whiteford v. Reed,
155 F.3d 671 (3d Cir. 1998).....9

Arkansas Rules of Appellate Procedure 4 (a).....3

Arkansas Rules of Appellate Procedure 5 (a).....3

28 USC 1332.....3

Arkansas Rules of Civil Procedure 60(k).....8

TABLE OF APPENDICES

Page

Appendix A- Opinion of the United States
Court of Appeals for the Eighth Circuit
dated May 22, 2007.....1a-10a
Appendix B- Order of the United States
District Court of the Eastern District of
Arkansas, Western Division
dated September 1, 2006.....11a-22a
Appendix C- Judgment of Arkansas
state court
dated November 10, 2003.....23a-25a
Appendix D-Motion to set aside judgment
filed January 6, 2005.....26a-28a
Appendix E- Order Denying Motion to
Set Aside Judgment
Dated March 23, 2005.....29a-30a
Appendix F- Motion for Rule on Clerk
Dated April 29, 2005.....31a-33a

Appendix G- Denial of Motion for Rule on Clerk
dated September 8, 2005.....34a-35a
Appendix H- Complaint for Declaratory Judgment
in United States District Court
dated November 9, 2005.....36a-39a

OPINION BELOW

The opinion for the U.S. Court of Appeals for the Eighth Circuit filed May 22, 2007, appearing at 487 F.3d 1154, Appendix A, affirmed the September 1, 2006 decision of the United States District Court for the Eastern District of Arkansas Western Division, Appendix B.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 USC 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteen Amendment, due process clause.

STATEMENT OF THE CASE

The appeal will present questions about whether the *Rooker-Feldman* doctrine applies to any part of this case. Respondents filed suit in 2000 in Arkansas state court against Uni-Skit Technologies, Inc. (Uni-Skit), a California corporation, and petitioner, Skit International, Ltd, a Chinese corporation owned by Chinese nationals and based in Hong Kong. Both summonses were served upon Victor Lee, agent for service for Uni-Skit but not agent for Skit. An attorney filed an answer and counter-claim purportedly on behalf of both companies and did not allege lack of service or lack of personal jurisdiction on behalf of Skit. Judgment was entered against both defendants for $1,524,420. (App C). Those defendants filed a notice of appeal but dismissed the appeal as the transcript revealed no reversible issue was raised. Skit then filed in the state trial court a motion to set aside the judgment on the grounds that Skit had never been served, had no notice of the trial, did not hire the lawyer who filed the answer and had never had assets or an office in the United States. (App. D). That motion was

denied (App. E). Although a notice of appeal was filed within the thirty-day time limit, Arkansas Rules of Appellate Procedure 4(a), and the transcript was tendered within the ninety-day time limit, Arkansas Rules of Appellate Procedure 5(a), the Clerk of the Arkansas Supreme Court refused to file the transcript. Petitioner moved for a Rule on the Clerk to force the clerk to file the transcript, (App. F), and the Arkansas Supreme Court entered an order without opinion (App. G) denying petitioner's motion to order him to file the transcript. Petitioner then filed a diversity action in the federal district court, which had jurisdiction under 28 USC 1332 as petitioner was a citizen of China and respondent a citizen of Florida, which did not refer to the motion to set aside judgment or the refusal to file the transcript but merely alleged that there was no service of summons upon petitioner and no jurisdiction over its person (App. H). The District Court dismissed on grounds of the *Rooker-Feldman* doctrine (App. B) and the Eighth Circuit affirmed (App. A).

REASONS FOR ALLOWANCE OF THE WRIT

1. Since petitioner was never served with the summons or complaint prior to the entry of a judgment in excess of 1.5 million against it, petitioner was not a party to the suit at that time and therefore was not a state-court loser within the meaning of *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.* 544 U.S. 280, 284, 125 S Ct. 1517, 1521-22, 161 L. Ed. 2d 454 (2005) and the decision below is therefore inconsistent with this Court's opinion in that case. That opinion defined the *Rooker-Feldman* doctrine as follows:

> The *Rooker-Feldman* doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Since at the time of the judgment petitioner had not been

served. it was not a party to the suit at that time and therefore was not a state court loser and therefore the *Rooker-Feldman* doctrine does not apply to the federal district court action seeking to set aside that judgment because of lack of service of process. The case before the court by the Eighth Circuit is therefore in conflict with *Exxon Mobil* and is also inconsistent with *Lance v. Dennis*, 126 S.Ct. at 1202-03 (2006). It is also in conflict with the Tenth Circuit opinion in *Mo's Express LLC v. Sopkins* 441 F.3rd 1229 (10th Cir. 2006). which says that *Rooker-Feldman* doctrine does not apply if petitioner was not a party to the state court action:

> This court has repeatedly held that the *Rooker-Feldman* doctrine "should not be applied against non-parties" to the state court judgment. *Johnson v. Rodrigues* (Orozco). 226 F.3d 1103. 1109 (10th Cir. 2000) (citing *Johnson v. De Grandy*. 512 U.S. 997. 1005 (1994)); *Johnson v. Riddle*. 305 F.3d 1107. 1116 (10th Cir. 2002) (calling this rule "well settled"). Rooker-Feldman. after all. bars the federal district court from exercising appellate jurisdiction over state court judgments. and "a person would generally have no basis (or right) to

appeal a judgment to which that person was not a party." *Kenmen Eng'g v. City of Union*, 314 F.3d 468, 473 (10th Cir. 2002). The Supreme Court appeared to endorse this view in Exxon Mobil, characterizing its decision in De Grandy as holding that "the doctrine has no application to a federal suit brought by a nonparty to the state suit." Exxon Mobil, 125 S.Ct. at 1523. In Lance, the Court explicitly held that Rooker-Feldman does not apply against nonparties to the prior judgment in state court. Lance, 126 S.Ct. at 1202.

2. The Eighth Circuit opinion in this case is also inconsistent with the Rooker-Feldman doctrine as defined by the *Exxon Mobil* opinion because the petitioner in its federal district court complaint was not "inviting district court review and rejection" of the state trial court's denial of petitioner's motion to set aside the judgment or the aborted appeal from that denial. The district court complaint did not even mention the motion to set aside the judgment or the appeal which was not allowed but merely asked the federal district court to set aside the original judgment for lack of service. The original

judgment could not be appealed on the basis of failure of service because the lawyer who filed the answer without being hired by or speaking to petitioner did not raise lack of service in his answer or motion to dismiss. That issue was not raised until Skit hired its own lawyer and filed a motion to set aside the judgment, which led to the attempt to appeal which was refused wrongfully by the Arkansas Supreme Court Clerk.

3. *Rooker-Feldman* does not apply to bar subject matter jurisdiction of federal district court because of the denial of the motion to set aside judgment by the state trial court as the Arkansas Supreme Court wrongfully denied appellate review of that decision. As the opinion below states, the state trial court denied the motion to set aside the judgment March 22, 2005 and on April 4, 2005, Skit filed a notice of appeal, clearly within the thirty-days allowed by Arkansas law. Petitioner tendered the record to the clerk on June 28, 2005, clearly within ninety days of the notice of appeal allowed by Arkansas law, but the clerk refused to file it because the underlying motion to set aside the judgment appeared to him to have been untimely. That was improper for the clerk because, firstly, respondent never objected to the motion to set aside the

judgment on the grounds that it was untimely, second, whether a motion in the trial court is untimely or not is a matter for the Arkansas Supreme Court to rule on on appeal, not a reason for the clerk not to file the transcript and thirdly, a motion to set aside a judgment for lack of service can be filed anytime, Arkansas Rule of Civil Procedure 60(k). The only grounds for not filing the transcript are whether the notice of appeal was filed out of time or the transcript was tendered out of time. Therefore, the appeal was denied wrongfully by the clerk. The Motion for Rule on Clerk was filed in the Arkansas Supreme Court to force the clerk to file the transcript, but the Arkansas Supreme Court denied that motion without opinion. The parties, the Eighth Circuit and this Court are left without any explanation or excuse for not filing the transcript and allowing the appeal on the motion to set aside the judgment to go forward. Therefore, since the appeal was wrongfully denied, the trial court's denial of the motion to set aside judgment is of no effect for the purposes of *Rooker-Feldman*, collateral estoppel, or *res judicata*.

Accordingly, the complaint was filed in federal district court asking the district court to set aside the judgment and that

complaint did not mention the motion to set aside the judgment filed in the state trial court or the attempted appeal which was aborted wrongfully. Therefore, the district court was not being asked to exercise appellate jurisdiction over the state court, but to exercise its own original jurisdiction to set aside an obviously unconstitutional judgment because there was never service of the summons. The Eighth Circuit's application of *Rooker-Feldman* doctrine to the state court's denial of the motion to set aside the original judgment is improper because petitioner did not have a reasonable opportunity to raise its state claim because it was wrongfully denied appellate review and the Eighth Circuit's opinion is therefore inconsistent with the decisions in *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194. 211 F.3d 194 (4th Cir. 2000); *Long v. Shorebank Development Corp.*, 182 F.3d 548 (7th Cir. 1999); *Dale v. Moore*, 121 F.3d 624 (11th Cir. 1997); *Moccio v. New York State Office of Court Administration*, 95 F.3D 195 (2d Cir. 1996); *Gulla v. North Strabane Tp.*, 146 F.3d 168 (3d Cir. 1998); *Brokaw v. Weaver*, 305 F.3d 660 (7th Cir. 2002) and *Whiteford v. Reed*, 155 F.3d 671 (3d Cir. 1998). However the Eighth Circuit's opinion that *Rooker-Feldman* applies even when there is no opportunity to raise the claims in state court is

consistent with the Ninth Circuit's opinion in *Bianchi v. Rylaarsdam*, 334 F.3d 895 (9th Cir. 2003). This is an issue causing much disagreement among the circuits requiring immediate review.

4. The Eighth Circuit's opinion wrongfully implied that the Arkansas Supreme Court decided the appeal was untimely although there was no such finding and said the state circuit court found that Skit had been served but there was no such finding. No court ever held it was untimely and the respondent had never alleged that the appeal was untimely. The Eighth Circuit's characterization of the appeal as untimely should be disregarded by this Court as there is no basis in the record for that characterization. The Eighth Circuit's opinion also erroneously said the state circuit court found that Skit had been served but it had not. see App. E.

5. The *Rooker-Feldman* doctrine does not apply to this case for the additional reason that the complaint in federal district court did not invite district court review and rejection of

the original judgment as required by *Exxon Mobil* as lack of service was not raised prior to judgment. As the issue of service of process was never raised before the judgment was rendered in state court and therefore was not a part of that judgment, the complaint did not ask the district court to review and reject that judgment but only asked the District Court to set aside that judgment for failure of service of process. The opinion below is unconstitutional with the Ninth Circuit in *Mullins v. State*, 57 F.3d 789 (9th Cir. 2005):

"But the Mullinses have not asked the federal courts to review a final determination of any state court."

6. The *Rooker-Feldman* doctrine should be overruled as it is causing more mischief than benefit and its role could be adequately performed by *res judicata*. If *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) had been decided merely under the doctrine of *res judicata* the decision would have been decided in the same way without generating a new troublesome subject matter jurisdiction doctrine. If *Skit v. DAC* were determined only by *res judicata* the federal district court could have set aside the original judgment for lack of personal

jurisdiction because of failure to obtain service because the issue of service was not litigated in the original judgment. *Res judicata* would not have applied to the denial of the motion to set aside judgment filed later in state court because appellate review was wrongfully withheld. As this Court said in *Exxon Mobil*:

> Disposition of the federal action, once the state-court adjudication is complete, would be governed by preclusion law. The Full Faith and Credit Act, 28 U.S.C. §1738, originally enacted in 1790, ch. 11, 1 Stat. 122, requires the federal court to "give the same preclusive effect to a state-court judgment as another court of that State would give".

Why then is the *Rooker-Feldman* doctrine necessary? The law has enough traps for the unwary without this one.
Justice Stephens' dissent in *Lance v. Dennis*, 546 U.S. 459, 126 S Ct. 1198, 163 L.Ed.2d 1059 (2006) said:

> Last term, in Justice Ginsburg's lucid opinion in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S.

> 280 (2005), the Court finally interred the so-called "*Rooker-Feldman* doctrine ." And today, the Court quite properly disapproves of the district court's resuscitation of a doctrine that has produced nothing but mischief for 23 years.

Justice Stephen's concurring opinion in *Marshall v. Marshall*, 547 U.S. 293, 126 S. Ct. 1735, 164 L.Ed.2d 480 (2006) referring to the probate "exception" to federal jurisdiction said:

> Rather than preserving whatever vitality that the probate "exception" has retained as a result of the Markham dicta, I would provide the creature with a decent burial in a grave adjacent to the resting place of the *Rooker-Feldman* doctrine. See *Lance v. Dennis*, 546 U.S. _____, _____ (2006) (Stevens, J., dissenting) (slip op., at 2-3).

This case is an appropriate vehicle for burial of the *Rooker-Feldman* doctrine by the majority before it causes further injustice to litigants as it did in the present case or

further waste of time by the judiciary in trying to fit the facts of a case within a doctrine which is totally unnecessary.

CONCLUSION

Rooker-Feldman doctrine has caused more mischief to this litigant than any other. When a doctrine stands in the way of a court setting aside a judgment when it is uncontroverted that there was no service on the defendant, it is time for that doctrine to go.

R. David Lewis
Attorney for Petitioner
1109 Kavanaugh Boulevard
Little Rock, Arkansas 72205
501 664-0818

CERTIFICATE OF SERVICE

I, R. David Lewis, certify that a copy of the this pleading has been mailed this ____ day of _____, 2007 to:

Kenneth R. Shemin
Shemin & Hendren, PLLC
One East Center Street, Suite 212
Bank of America Plaza
P.O. Box 3578
Fayetteville, Arkansas 72702
(501) 973-4442

_____
R. David Lewis

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 06-3496

May 22, 2007

SKIT INTERNATIONAL, LTD,

PLAINTIFF/APPELLANT,

v.

DAC TECHNOLOGIES OF ARKANSAS, INC., FORMERLY KNOWN AS DAC TECHNOLOGIES OF AMERICA, INC.; DAC TECHNOLOGIES GROUP INTERNATIONAL, INC.,

DEFENDANTS/APPELLEES.

Appeal from the United States District Court for the Eastern District of Arkansas.

The opinion of the court was delivered by: Murphy, Circuit Judge.

Submitted: April 13, 2007

Before MURPHY, BENTON, and SHEPHERD, Circuit Judges.

Skit International, Ltd. (Skit) brought this action

against DAC Technologies of Arkansas, Inc. (DAC) seeking to have the judgment that DAC had obtained against it in state court set aside for lack of service and lack of personal jurisdiction. The district court dismissed the action for lack of jurisdiction under the Rooker-Feldman doctrine. Skit appeals, and we affirm.

On August 15, 2000 DAC, a Florida corporation, brought a breach of contract action in Pulaski County Circuit Court against Skit, a Hong Kong corporation, and Uni-Skit Technologies, Inc. (Uni-Skit), a California corporation. Summonses were served on Victor Lee, the registered agent for Uni-Skit. Attorney Mark Ross filed an answer and counterclaim on behalf of both companies and did not object to service or personal jurisdiction. The jury found in favor of DAC in August 2003, and a judgment was entered against Skit and Uni-Skit for $1,524,420.

Although Skit filed a notice of appeal, it moved to dismiss its appeal on April 12, 2004. The Arkansas Court of Appeals dismissed the appeal the following day. On January 6, 2005 Skit filed a motion in the circuit court to set aside the

judgment as void for lack of personal jurisdiction, lack of service of summons, and lack of venue. Skit argued that it did not have minimum contacts with the forum state and that it had not been made aware of the lawsuit until late 2004, after judgment had been entered. It alleged that Victor Lee had not and could not accept service on behalf of Skit and that neither Skit nor Lee had authorized Ross to make an appearance on its behalf. After a hearing, the circuit court denied the motion on March 22, 2005.

On April 4, 2005 Skit filed another notice of appeal. It tendered the record to the clerk of the Arkansas Supreme Court on June 28, 2005, but the clerk refused to file it because the underlying motion to set aside the judgment appeared to have been untimely.

Skit then filed a motion for rule on the clerk, asking the Arkansas Supreme Court to order the clerk to accept the record pursuant to Arkansas Supreme Court Rule 2-2. The supreme court denied the motion on September 8, 2005.

Skit then filed this diversity action in federal district

court seeking to have the state judgment against it declared null and void on the grounds that it was obtained without jurisdiction and without service of process. The parties filed cross motions for summary judgment. DAC argued that the federal action was barred by res judicata, and the district court granted it summary judgment on this basis.

Skit moved for reconsideration, arguing that the state circuit court's decision was not entitled to preclusive effect because Skit had not had a full and fair opportunity to appeal it due to the clerk's refusal to file the record. After ordering supplemental briefing, the district court dismissed Skit's claim for lack of subject matter jurisdiction under the Rooker-Feldman doctrine because Skit was improperly seeking federal appellate review of a state court judgment.

Skit appeals, arguing that it is not attempting to use the lower federal courts as a means of appellate review and that the Rooker-Feldman doctrine does not apply when a party has been unable to obtain state appellate review of the merits of the claim it brings before the federal court. It contends that the state judgment is void because Skit was not

properly served with a summons and that the circuit court's finding that it had been served was erroneous. We review de novo a district court's determination that it lacks subject matter jurisdiction. Simes v. Huckabee, 354 F.3d 823, 827 (8th Cir. 2004).

The Rooker-Feldman doctrine prohibits lower federal courts from exercising appellate review of state court judgments. See D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fid. Trust Co., 263 U.S. 413, 416 (1923). The United States Supreme Court is the only federal court empowered to exercise appellate review of state court judgments, except for habeas petitions. 28 U.S.C. Â§ 1257; see also Simes, 354 F.3d at 827. A district court is not deprived of jurisdiction over every case in which a plaintiff seeks a result different from the one it obtained in state court. See Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 292 (2005). Rather, Rooker-Feldman is implicated in that subset of cases where the losing party in a state court action subsequently complains about that judgment and seeks review and rejection of it. Id. at 284.

Skit's federal complaint is in many ways a classic illustration of the cases covered by the Rooker-Feldman doctrine. On its face the complaint is denominated as an action for "collateral[] attack" on the Arkansas judgment and seeks to have that judgment declared void. This was the same relief sought by the plaintiffs in Rooker. 263 U.S. at 414. There, the Supreme Court noted that even if the state court judgment were erroneous, "that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding." Id. at 415. As in Rooker, the alleged injury for which Skit seeks redress here stems directly from the state court judgment itself rather than from some separate injury caused by the defendant. See id. at 414-15; see also Exxon Mobile(sic), 544 U.S. at 291; Centres, Inc. v. Town of Brookfield, 148 F.3d 699, 702 (7th Cir. 1998) (noting distinction between "a federal claim alleging injury caused by a state court judgment" and "a federal claim alleging a prior injury that a state court failed to remedy"). Had the state court not entered a judgment against Skit and thereafter rejected its attempt to set aside the judgment for lack of service, Skit would have no injury in need of redress. See Garry v. Geils, 82 F.3d 1362, 1368 (7th

Cir. 1996). Moreover, Skit's complaint calls upon the district court to "overturn an injurious state-court judgment," see Exxon Mobile (sic), 544 U.S. at 292, on precisely the same grounds that Skit raised unsuccessfully to the state trial court: lack of service of process and lack of jurisdiction.

Skit argues that because it was unable to obtain state appellate review of its lack of service claim, it is entitled to bring its challenge in federal court without implicating the Rooker-Feldman doctrine. Skit cites language in Simes v. Huckabee in which this court noted that Rooker-Feldman is triggered only when plaintiffs have had a "reasonable opportunity to raise their federal claims in state court." 354 F.3d at 829. In Simes, we concluded that plaintiffs had not had such an opportunity because the state court had failed entirely to address the federal claims plaintiffs had raised. Id. at 829. Because the federal claims had not been dealt with in the state decision, subsequent consideration of them by a federal district court could not amount to appellate review of the state courts decision. See id. at 827, 830; cf. Wood v. Orange County, 715 F.2d 1543, 1547 (11th Cir. 1983) ("an issue that a plaintiff had no reasonable opportunity to raise

cannot properly be regarded as part of the state case"). This does not mean, however, that state courts must "undertake extensive analysis" of every claim "in order for Rooker-Feldman to bar a later federal suit." Simes, 354 F.3d at 830.

In contrast to the circumstances in Simes, here Skit raised its service of summons argument to the state circuit court and that court specifically rejected it. See Crutchfield v. Countrywide Home Loans, 389 F.3d 1144, 1148 (10th Cir. 2004) (refusing to entertain claim that state judgment violated notice statute where argument rejected by state court). Nowhere in Simes did we suggest that a state system must provide an appellate court decision on plaintiff's claims, and we decline to exempt from Rooker-Feldman a party whose appeal was not heard because it was considered untimely. See Davison v. Gov't of P.R., 471 F.3d 220, 223 (1st Cir. 2006); see also Rooker, 263 U.S. at 415 (remedy to erroneous state court decision is an "appropriate and timely [state] appellate proceeding") (emphasis added).

Skit urges us to find that its notice of appeal and attempt to file the record were not untimely under Arkansas

law and that its appeal was therefore wrongfully denied by the Arkansas Supreme Court. This is precisely what the Rooker-Feldman doctrine was intended to prevent: federal review and rejection of a state decision. See Exxon Mobile (sic), 544 U.S. at 291; see also Davison, 471 F.3d at 223. We conclude that neither this court nor the district court has jurisdiction to review the Arkansas Supreme Court's decision to deny Skit's motion for a rule on the clerk. Skit has not argued that Arkansas appellate procedures violated some independent federal right, but rather that the Arkansas courts erred in permitting the judgment against it to stand. Because Skit has alleged no injury apart from an allegedly erroneous state judgment, Skit is necessarily seeking appellate review of that judgment. Cf. Jordahl v. Democratic Party, 122 F.3d 192, 202 (4th Cir. 1997) (distinguishing between "actions seeking review of the state court decisions themselves and those cases challenging the constitutionality of the process by which the state court decisions resulted").

As the district court aptly observed, "[t]hat Skit argues for an exception to the Rooker-Feldman doctrine for cases decided by a state trial court but deemed unappealable

by the state appellate court simply confirms that Skit is asking [the district court] to serve as a surrogate appellate court to review the decision of the Pulaski County Circuit Court." Skit Int'l, Ltd. v. DAC Techs. of Ark., Inc., 2006 U.S. Dist. LEXIS 63091 at *10 (E.D. Ark. 2006). The Rooker-Feldman doctrine forbids lower courts from exercising such appellate review. Accordingly, we affirm the judgment of the district court.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS,
WESTERN DIVISION

SKIT INTERNATIONAL, LTD. PLAINTIFF

VS. NO. 4-5-CV-1713 JLH

DAC TECHNOLOGIES OF ARKANSAS, INC.F/K/A/ DAC TECHNOLOGIES OF AMERICA, INC.AND DAC TECHNOLOGIES GROUP INTERNATIONAL, INC. DEFENDANT

OPINION AND ORDER

The Court previously granted summary judgment in favor of the defendants pursuant to an Opinion and Order entered on June 6, 2006. Skit International, Ltd., filed a motion for reconsideration. Document #28. The Court then asked for supplemental briefing on the issue of whether the

Rooker-Feldman doctrine precludes subject matter jurisdiction in this case. [1] After reviewing the supplemental briefs, the court has come to the conclusion that this case falls squarely within the *Rooker-Feldman* doctrine.

The Eighth Circuit explained:

> The *Rooker-Feldman* doctrine states that district courts do not have subject matter jurisdiction over challenges to state court decisions in judicial proceedings. *Rooker v. Fidelity Trust Co.*, 263 U.S., 413, 416, 44 S Ct. 149, 150, 68 L. Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476, 103 S. Ct. 1303, 1311, 75 L. Ed. 2d 206 (1983). The only court with jurisdiction to review decisions of state courts is the United States Supreme Court. *Feldman*, 460 U.S. at 486, 103 S Ct.

[1] The *Rooker-Feldman* doctrine is so named after two case: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

at 1316. A federal district court has jurisdiction over general constitutional challenges if these claims are not inextricably intertwined with the claims asserted in state court. *Keene Corp.*, 908 F.2d at 296. A claim is inextricably intertwined if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. *Id.* At 296-97. In other words, *Rooker-Feldman* precludes a federal action if the relief requested in the federal action would effectively reverse the state court decision or void its ruling. *Landers Seed Co. v. Champaign Nat'l Bank*, 15 F.3d 729 (7th Cir.), *cert. denied*, 513 U.S. 811, 115 S. Ct. 62, 130 L. Ed. 20 (1994). Accordingly, to determine whether *Rooker-Feldman* bars Charchenko's federal suit requires determining exactly what the state court held and whether the relief requested by Charchenko in his federal action requires determining the state court's decision is wrong or would void its ruling. If the relief requested in the federal action requires determining that the state court decision is wrong or would void the state court's ruling, the issues are inextricably intertwined

> and the district court has no subject matter jurisdiction to hear the suit.

Charchenko v. City of Stillwater, 47 F.3d 981, 983 (8th Cir. 1995) (footnote omitted). The *Rooker-Feldman* doctrine is broader than claim and issue preclusion because it does not depend upon a final judgment on the merits. *Id.* at 983 n.1.

The claim that Skit advances here was first presented to the Pulaski County Circuit Court in a motion to set aside the judgment entered against it earlier. Skit filed a one-page brief in support of the motion in which it asserted that the judgment was void because Skit was never served with process and because Skit lacks minimum contacts with the State of Arkansas. After the hearing, the Pulaski County Circuit Court denied the motion to set aside the judgment.

Here, Skit's complaint requests that this Court issue a declaratory judgment stating that the judgment was entered in the Pulaski County Circuit Court is void because Skit was never served with process and because Skit lacks minimum contacts with the State of Arkansas. In effect, Skit is asking

this Court to reverse a state-court decision or to void its ruling overruling these arguments. The relief that Skit seeks would require this Court to determine that the Pulaski County Circuit Court was wrong when it refused to set aside the judgment. Indeed, in the pending motion for reconsideration, Skit asserts as a basis for reconsideration that the state court "apparently based its ruling on the defendants' assertion that Victor Lee's brother-in-law owned Skit which we know not to be true." The relief sought here is precisely what an appellant seeks: a declaration that the ruling below is erroneous.

Skit attempts to avoid this conclusion by noting that it tried to appeal the ruling of the Pulaski County Circuit Court but the Supreme Court of Arkansas refused to hear the appeal. Skit argues that the supreme court's refusal to hear the appeal from the motion to set aside the judgment means that the *Rooker-Feldman* doctrine does not apply. In support of that argument, Skit cites *Simes v. Huckabee*, 354 F.3d 823 (8th Cir. 2004). There, before the action was filed in federal court, the Phillips County Circuit Court had held five members of the Phillips County Quorum Court in contempt

for failing to order a sales-tax election as require by Arkansas law and as ordered by the circuit court, and the quorum court members had appealed to the Supreme Court of Arkansas. In their appeal, they had raised issues under both state and federal law. However, the Supreme Court of Arkansas ruled only on the state law issues, ignoring the federal claims. *Id.* at 826. Then, the quorum court members filed the action in federal district court "alleging a host of federal statutory and constitutional violations." *Id.* The district court dismissed the action based on the *Rooker-Feldman* doctrine. On appeal to the Eighth Circuit, the issue was "whether *Rooker-Feldman* prevents a district court from obtaining jurisdiction over federal claims where a state court declined to address the same claims in state proceedings." *Id.* at 828. The Eighth Circuit held that the *Rooker-Feldman* doctrine did not bar a claim by the five quorum court members in federal court and explained:

> [F]ederal plaintiffs cannot be said to have had a reasonable opportunity to raise their federal claims in state court where the state court declines to address those claims and rests its holding solely on state law.

> We have noted the *Rooker-Feldman* doctrine is founded upon principles of federalism. However, the district court's holding in this case extends such doctrine far beyond the deference of our state colleagues which federalism counsels. Were the district court's reasoning to stand, defendants in state court would be placed in the following quandary: if they do not raise their federal claims in the state proceedings, they run the risk of not being able to bring them subsequently to federal court. *Feldman*, 460 U.S. at 482 n. 16, 103 S Ct. 1303 ("By failing to raise his claims in state court a plaintiff may forfeit his right to obtain review of the state-court decision in any federal court."). But if they do raise federal claims in their state court defense, and the state court declines to address them, then according to the district court in this case they are also barred from bringing those claims in federal court. No principle of federalism suggests or requires such a result.

Simes, 334 F.3d at 829. *Simes* did not hold that a federal district court may serve as a surrogate appellate court if the

state appellate court has refused to entertain the plaintiff's appeal, which in substance is Skit's argument. Rather, *Simes* held that "the *Rooker-Feldman* doctrine does not bar federal claims brought in federal court when a state court previously presented with the same claims declined to reach their merits." *Id.* at 830. Here, the arguments that Skit seeks to present were presented to Pulaski County Circuit Court, and that court rejected them, whereas in *Simes* the plaintiffs sought to present federal claims that were presented to a state court but were never adjudicated on the merits by that or any other state court.

In *Crutchfield v. Countrywide Home Loans*, 389 F.3d 1144, 1148 (10th cir. 2004), the court stated:

> Mr. Crutchfield appeals the district court's ruling that notice in the state court foreclosure action was proper. *Rooker-Feldman* bars our subject matter jurisdiction to entertain this argument. The District Court for Oklahoma County held that Mr. Crutchfield was personally served with a summons in the manner required by law and that the court "approves the

service as meeting the statutory requirements." In response to defendants' first motion for summary judgment in federal court, Mr. Crutchfield contended that the state court's holding was contrary to Oklahoma's notice statue. This was, in substance, a request that the federal district court overturn the judgment of the state court, which the federal court may not do. When a state court actually decides an issue, *Rooker-Feldman* prevents federal courts from hearing an appeal of that claim. *Id.* at 1148 (citation omitted). This case is substantially similar to *Crutchfield*. *See also In re Knapper*, 407 F.3d 573 (3d Cir. 2005); *Girard L McEntee Ins. Agency, Inc. v. Valley Nat'l Bank*, No. 105-1952, 2006 WL 1097839 (N.D. Apr. 21, 2006).

> The Supreme court recently explained the *Rooker-Feldman* doctrine as follows:
>
> The *Rooker-Feldman* doctrine... is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-

> court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S. Ct. 1517, 1521-22, 161 L. Ed.2d 454 (2005). This case falls squarely within the *Rooker-Feldman* doctrine as explained by the Supreme Court. A judgment was entered against Skit by the Pulaski County Circuit Court. Skit moved to set the judgment aside because it did not have minimum contacts with the State of Arkansas. The Pulaski County Circuit court denied Skit's motion. Thereafter, Skit commenced this action and asked this court to hold that the judgment entered by the Pulaski County Circuit Court is void and should be set aside because Skit was not served with process and because Skit lacks minimum contacts with thee State of Arkansas. In substance, Skit is asking this Court to review the decision of the Pulaski County Circuit Court denying the motion to set aside the judgment. The present action is the functional equivalent of an appeal from the

Pulaski County Circuit Court's order denying the motion to set aside the judgment. *Am Reliable Ins. v. Stillwell*, 336 F.3d 311, 316-17 (4th Cir. 1996). This Court does not have appellate jurisdiction. *In re Goetzman*, 91 F.3d 1173, 1177 (8th Cir. 1996). That the Supreme Court of Arkansas declined to accept Skit's appeal from the Pulaski county Circuit Court does not vest this Court with appellate jurisdiction. That Skit argues for an exception to the *Rooker-Feldman* doctrine for cases decided by the state trial court but deemed unappealable by the state appellate court simply confirms that Skit is asking this Court to serve as a surrogate appellate court to review the decision of the Pulaski County Circuit Court.

This Court has no appellate jurisdiction over the Arkansas courts and cannot review their decisions except to the limited extent it is authorized to do so in cases in which prisoners seek writs of habeas corpus. *Mosby v. Ligon*, 418 F.3d 927, 931 (8th Cir. 2005). This Court lacks subject matter jurisdiction to review the decision of the Pulaski County Circuit Court denying Skit's motion to set aside the judgment. Therefore, Skit's motion for reconsideration is

DENIED. Document #28.

IT IS SO ORDERED this 1st day of September, 2006.

J. LEON HOLMES
UNITED STATES DISTRICT JUDGE

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS, SECOND DIVISION

DAC TECHNOLOGIES OF ARKANSAS, INC. f/k/a DAC TECHNOLOGIES OF AMERICA, INC.AND DAC TECHNOLOGIES GROUP INTERNATIONAL, INC. PLAINTIFF

VS. NO. 00-7239

SKIT INTERNATIONAL, LTD. & UNI- SKIT TECHNOLOGIES, INC. DEFENDANT

JUDGMENT

On this 13th day of August, 2003, this cause came on to be heard Plaintiff, DAC Technologies of Arkansas, Inc. f/k/a DAC Technologies of America, Inc. and DAC Technologies Group International, Inc., appeared by and through its attorney, Kenneth R. Shemin of Shemin &

Hendren. P.L.L.C., and Defendant. Skit International and Uni-Skit Technologies. Inc. appeared by and through their attorney. Mark L. Ross of Ross & Ross. P.A. After all parties announced they were prepared for trial, a jury composed of twelve (12) members of the regular panel of petit jurors of this Court were selected, impaneled, and sworn according to law to try the issues of fact arising in this case. After hearing all of the evidence introduced. the instructions of the Court and the arguments of counsel. the jury retired to consider the verdict, and after deliberating thereon returned the following verdicts reflected on Exhibit A. a copy if which is attached hereto and made a pert hereof.

With respect to the issue as to whether the Judgment should be reduced based upon the value of the DAC stock delivered to Defendant Skit International in 1998. the Court finds that Skit International is entitled to a reduction in the Judgment in the amount of $125.580.00 which is based upon a stipulated value of $0.78 per share. thus making the judgment amount $1.524.420. The transfer agent for DAC is hereby directed to take any appropriate action to cancel the delivery of any DAC stock to Defendant Skit International and to transfer

any such shares as directed by an appropriate Board Resolution of DAC.

IT IS, THEREFORE, BY THE COURT CONSIDERED, ORDERED AND ADJUDGED that DAC Technologies of Arkansas, Inc., f/k/a DAC Technologies of America, Inc. and DAC Technologies Group International, Inc. is entitled to Judgment in the amount of One Million Five Hundred Twenty-Four Thousand, Four Hundred Twenty Dollars ($1,524,420.00) on its claim for breach of contract based upon the jury findings against Defendants, Skit International, Ltd. and Uni-Skit Technologies, Inc. In addition, Plaintiffs are entitled to post-judgment interest at the rate of 6% per annum pursuant to the parties' agreement.

DATED this 10th day of November, 2003.

_____
HONORABLE CHRIS PIAZZA

Kenneth R. Shemin
Attorney for Plaintiff

Mark Ross
Attorney for Defendant

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS, SECOND DIVISION

DAC TECHNOLOGIES OF ARKANSAS, INC. f/k/a DAC TECHNOLOGIES OF AMERICA, INC.AND DAC TECHNOLOGIES GROUP INTERNATIONAL, INC. PLAINTIFF

VS. NO. 00-7239

SKIT INTERNATIONAL, LTD. & UNI- SKIT TECHNOLOGIES, INC. DEFENDANT

MOTION TO SET ASIDE JUDGMENT

Defendant Skit International, Limited (hereinafter SIL), in a special appearance, moves to set aside the judgment against it for lack of service of summons, jurisdiction or venue and in support states:

1. SIL has no presence in the United States and this Court has no jurisdiction over SIL and never has. SIL has no office in the United States and has no agent for service in the United States and never has.
2. SIL was never served with summons in this case. Mark Ross filed an answer and counterclaim for SIL, and Uni-Skit Technologies, Inc. and judgment was rendered against both defendants for $1,650,560. However, SIL never hired Mark Ross or authorized him to file an answer or counterclaim. See affidavit of Victor Lee attached hereto the effect that he appeared on behalf of Uni-Skit only, did not accept service for SIL or instruct a lawyer to defend on its behalf. See affidavit of Yung Lee Ho attached of Hong Kong to the effect that he is the director of SIL, that SIL has no agent for service in the United States, that no officer of SIL was aware of this action until lately when a notice of taking deposition was passed to SIL from Uni-Skit Technologies, Inc., and that Uni-Skit did not have authority to accept service or to defend on behalf of SIL. Attached are internet printouts from California and Arkansas Secretary of

State to show that SIL is not registered in either state.

WHEREFORE. SIL moves this judgment be set aside for lack of service. jurisdiction and venue.

_____

R. David Lewis
ABN 68-030
1109 Kavanaugh Boulevard
Little Rock. Arkansas 72205
501 664-0818
Attorney for Skit
International. Limited

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS, SECOND DIVISION

DAC TECHNOLOGIES OF ARKANSAS, INC. f/k/a DAC TECHNOLOGIES OF AMERICA, INC.AND DAC TECHNOLOGIES GROUP INTERNATIONAL, INC. PLAINTIFF

VS. NO. 00-7239

SKIT INTERNATIONAL, LTD. & UNI- SKIT TECHNOLOGIES, INC. DEFENDANT

ORDER DENYING MOTION TO SET ASIDE JUDGMENT

On this 1st day of March, 2005, the motion of Skit International, Limited, to set aside the judgment against it came on for hearing, Skit International Limited appearing by its attorney, R. David Lewis, and plaintiffs appearing by their

attorney Ken Shemin. After evidence was introduced and after argument of counsel, the Court finds no good reason to set aside the judgment and the motion to set aside the judgment is therefore denied.

JUDGE CHRIS PIAZZA

3-33-05

Prepared By
R. David Lewis
1109 Kavanaugh
Little Rock, Arkansas 72205

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS,
WESTERN DIVISION

SKIT INTERNATIONAL, LTD. APPELLANTS

VS. NO. CA

DAC TECHNOLOGIES OF ARKANSAS, INC.F/K/A/ DAC TECHNOLOGIES OF AMERICA, INC.AND DAC TECHNOLOGIES GROUP INTERNATIONAL, INC. APPELLEES

MOTION FOR RULE ON THE CLERK

Appellant tendered this record June 28, 2005 at 4:23 p.m. On June 29th, 2005 the clerk called undersigned counsel to state that the tender would be declined because the motion to set aside judgment shown in the transcript to be fled in the circuit clerk's office January 6, 2005 appeared to be untimely

as the judgment was entered November 10. 2003. Counsel's response to the clerk was that the motion was timely because appellant was never served with summons of the complaint and did not know the lawsuit existed until late 2004 when appellant received a notice of deposition. Although Skit International Ltd., hereinafter "Skit", never was served with summons, an attorney in Little Rock filed an answer and counterclaim for Skit and Uni-Skit Technologies, Inc., hereinafter "Uni-Skit", a corporation which was served with summons, and judgment was rendered against both defendants for $1,650,560.00. However, Skit never hired that attorney or authorized him to file an answer or counter claim. Skit did not know about the trial and did not attend. Skit had no agent for service in the United States and still does not. Skit has never had an office in the United States.

ARCP 60(b) allows a court to correct clerical mistakes in judgments arising from oversight or omission. Entering a judgment when there was no service of summons is a clerical mistake.

"Judgments rendered without valid service are void, and a defendant need not show a meritorious defense to set

aside a void judgment". *Williams v. Citibank* (South Dakota). NA 80 Ark. App 42, 90 SW3d 451 (2002).

There were not contracts between SIL and Arkansas sufficient to permit Arkansas to exercise personal jurisdiction over SIL under the due process clause of the 14th Amendment of the United States /Constitution. *International Shoe Co. v. Washington*, 326 US 310 (1945).

Wherefore, appellant Skit prays for an order directing the clerk to file the record in this case.

Respectfully submitted:

R. David Lewis
Attorney for Skit
International,
Limited
1109 Kavanaugh Boulevard
Little Rock, Arkansas 72205
501 664-0818

Leslie W. Sheen
Clerk

Office of the Clerk
Supreme Court of the State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

September 8, 2005

R. David Lewis
Attorney at Law
1109 Kavanaugh
Little Rock, AR 72205

RE: 05-722, inc.
Skit International, Ltd. v. DAC Technologies of Arkansas.

Dear Mr. Lewis:

The Arkansas Supreme Court made the following order today in the above styled case:

"Motion for rule on clerk is denied. Brown, J., not participating."

Sincerely,

Leslie W. Sheen, Clerk

LWS:jko

Cc: Kenneth R. Shemin
Honorable Chris Piazza, Circuit Judge
Pat O'Brian, Clerk
(CV00-7239)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS.
WESTERN DIVISION

SKIT INTERNATIONAL. LTD. PLAINTIFF

VS. NO. 4-5-CV-1713 JLH

DAC TECHNOLOGIES OF ARKANSAS, INC.F/K/A/ DAC TECHNOLOGIES OF AMERICA, INC.AND DAC TECHNOLOGIES GROUP INTERNATIONAL, INC. DEFENDANT

COMPLAINT FOR DECLARATORY JUDGMENT

Defendant Skit International, Ltd., by and through its attorney, R. David Lewis, files this declaratory judgment to collaterally attack a judgment for lack of service of summons and alleges as follows:

1. This court has jurisdiction as there is complete diversity of citizenship and the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs.

2. Plaintiff is a Hong Kong corporation which does not have and never has had an office, agent for service of summons or assets in the United States. Defendant DAC Technologies of Arkansas, Inc. formerly known as DAC Technologies Group International, Inc. is a Florida corporation having its principal place of business in Little Rock, Arkansas.

3. Defendants obtained a judgment in Pulaski County Circuit Court for $1,650,560 on August 13, 2003 against plaintiff and Uni-Skit Technologies, Inc. without ever serving plaintiff with a summons or complaint. Plaintiff was not at the trial and didn't know there was a lawsuit against it or a trial at the time and didn't learn there was a lawsuit against it until late in 2004. Defendants DAC had served Victor Lee with two summonses, one for Uni-Skit and one for

Skit International but Lee was only the agent for service for Uni-Skit Technologies, Inc. and not the agent for Skit International, LTD. Uni-Skit had sent a debt to a collection agency for collection from the DAC corporations and that agency sent both summonses to a collection attorney in Little Rock who filed an answer for both corporations, went to trial without ever talking to anyone from plaintiff and lost.

4. Without service of the summons Pulaski County Court had no jurisdiction over the person of plaintiff and the judgment is therefore void. That court didn't have jurisdiction over the plaintiff for the further reason that plaintiff had no assets or office in the United States and had no contacts with Arkansas sufficient to give a court in Arkansas jurisdiction over it.

5. Plaintiff is entitled to a restraining order restraining enforcement of this judgment until this case is concluded and upon final hearing, a declaratory judgment voiding the judgment obtained against this

plaintiff in Pulaski County Circuit Court. attorney's fees. costs and all other proper relief.

WHEREFORE, plaintiff prays for a restraining order restraining defendants from trying to collect their judgment until this case is concluded and upon final hearing. a declaratory judgment that the judgment in Pulaski County is void for lack of personal jurisdiction, and for attorney's fees and costs.

R. David Lewis 68-030
1109 Kavanaugh Boulevard
Little Rock. Arkansas 72205
501 664-0818